
Subject: Regulation of Violent Video Games and the First Amendment

Posted by [terminator 101](#) on Sun, 02 Apr 2006 05:10:51 GMT

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Since the article is quite long, I have decided to highlight the most important things. Post your opinions. I don't think I can put my thoughts into words.

Quote:United States Senate's Judiciary Subcommittee on the Constitution, Civil Rights, and Property Rights held a hearing designed to publicly discuss the issue of laws restricting game sales. Titled "What's in a Game? Regulation of Violent Video Games and the First Amendment," the hearing saw two panels of four testify on the impact violent video games have on children and how games are--or aren't--protected as free speech under the U.S. Constitution.

The hearing was called by Senator Sam Brownback (R-KS), a vocal game-industry critic and cosponsor of Senate bill 1902, the Children and Media Research Advancement Act. Also known as CAMRA, the act was first introduced last fall by Senator Joseph Lieberman (D-Conn.), and it seeks to have the Centers for Disease Control and Prevention investigate the psychological effects of "impact of electronic media use." It is not the Family Entertainment Protection Act, which Lieberman co-introduced last fall with Senator Hillary Clinton (D-NY), which seeks to regulate sales of games the government deems violent.

The first witness before the committee was the Reverend Steve Strickland. Strickland's Police officer brother was murdered in 2003 by a young criminal who claimed to have played Grand Theft Auto: Vice City before committing the killing. As outlined in a civil suit in which Strickland is a co-plaintiff, the now-convicted murderer infamously told police that "life is like a video game--everyone has to die sometime."

During his emotional testimony, Strickland lashed out at games' impact on society. "As I gather more information on the games and the people who call themselves 'gamers,' I could see how someone like Devin, who at one minute did not put up any resistance ... [could take] my brother's gun from him in the police station, shooting him and then killing two other men in a matter of less than two minutes," said Strickland. "A game such as Grand Theft Auto: Vice City could and did teach him how to do this."

Strickland also heaped praise on his attorney, anti-game activist Jack Thompson. "As a minister, I deal with a lot of different issues and try to stay up and become educated on them, but Jack opened up a whole other world to me that I did not even know existed," he said: "This is the violent video game world--a world that, as far as I am concerned, is straight from the pits of hell."

Next up was Dr. Elizabeth Carll, chair of the Interactive Media Committee of the Media Psychology Division of the American Psychological Association (APA). After saying that "there are many video games that are very helpful for children to facilitate medical treatment, increase learning, and promote pro-social behavior," she turned her attention to "games that include aggression, violence, and sexualized violence."

Though at first saying that games "may have a negative impact on children," Carll went on to declare that "a comprehensive [APA] analysis of violence in interactive video game research suggests exposure increases aggressive behavior, aggressive thoughts, angry feelings,

physiological arousal, and decreases helpful behavior." She then declared the APA's support for CAMRA and asked that the game industry "link violent behaviors with negative social consequences" to promote better social behavior.

Following Carll was Dr. Dmitri Williams, assistant professor of speech communication at the University of Illinois at Urbana-Champaign. Unfortunately, the Judiciary Subcommittee had not released a transcript of his comments as of press time.

Williams was followed by Dr. David Bickham, a research scientist at the Center on Media and Child Health at Children's Hospital Boston, which is affiliated with Harvard's Medical School. At first, Bickham conceded that "video games are a relatively new form of entertainment media" and that they should be considered "within the broader field of research exploring portrayals of violence in television, film, and other forms of visual media."

After citing several studies that linked violent media to aggressive behavior, Bickham declared, "There are reasons to believe that the influences of violent video games are stronger than those of other forms of screen violence." He pointed out that games are interactive, reward the player for completing tasks, and "require almost complete attention" from the player.

Bickham continued by saying that "video games are designed to be incredibly engaging and 'fun,' often leading children to slip deeply into a 'flow state' in which they may be at increased susceptibility to the messages of the game. Scientific research has repeatedly demonstrated that children learn what video games teach, and often that lesson is doing violence."

Bickham's testimony was followed by that of the sole member of the game industry at the event, Entertainment Software Ratings Board president Patricia Vance. Vance began her statements by declaring that "the issues being discussed in today's hearing are critically important, especially to parents." She also asserted that the "self-regulatory [ESRB] system offers a valuable, reliable, and credible tool to make the right video game choices for their families."

Vance went on to explain the various ESRB ratings and how they point out on the cover if a game has such content as "violence, language, suggestive or sexual content, gambling, and use of controlled substances." She then went on to break down how 50 percent of the games released in 2005 were rated E for Everyone, 12 percent were rated E10+ for Everyone 10 and Older, 24 percent were rated T for Teen, and 12 percent were rated M for Mature. She said the remaining two percent were made up of the fringe ratings EC for Early Childhood and AO for Adults Only

Vance then broke down the rating process, which has "at least three or more raters" view a "videotape capturing all pertinent content [of a game], including the most extreme instances." She said that the raters cross-check said footage with written descriptions of the content of the game and will sometimes play a beta version of the game to ensure further accuracy. She added, "To ensure that all pertinent content was fully disclosed during the rating process, after a game is publicly released, ESRB testers review randomly and hand-selected final product."

Naturally, the subject then turned to the most famous incident regarding the ESRB, last year's so-called "Hot Coffee" scandal regarding Grand Theft Auto: San Andreas. Rather than deem it a failure, Vance asserted the incident "showed how effective and forceful an enforcement system we have at our disposal."

To back up her words, Vance cited the rapid revocation of San Andreas' M rating and its replacement with an AO rating, which led to its being pulled from store shelves. The move cost Take-Two Interactive, parent of GTA publisher Rockstar Games, tens of millions of dollars in lost revenue. "I submit that there is no other industry self-regulatory system willing or capable of imposing such sweeping sanctions on its own members, which in this particular case resulted in the removal of a top-selling product from the market, a major loss of sales and a drop in shareholder value," she said.

Next to sit before the committee was Jeff Johnson, the Republican Assistant Majority Leader of the Minnesota House of Representatives. Displaying the folksy humor his home state is famous for, Johnson said that he is "the father of two little boys who would play video games 12 hours a day if my wife and I didn't limit them to three hours a week."

However, Johnson took a more serious tone when describing, somewhat inaccurately, a Grand Theft Auto game, presumably San Andreas. "The more creative and brutal you are in killing innocent people, the more respect you gain and the more points you score." He went on to more accurately describe three other games often cited by critics of the industry: Manhunt, Postal 2, and Clock Tower 3.

Johnson went on to outline a bill he is sponsoring in the Minnesota legislature, which would fine children \$25 every time they attempted to buy M-rated or AO-rated games. "In our Minnesota bill, we have crafted very narrow language in order to address the constitutional concerns that exist about content-based restrictions of speech," he said. "We are not restricting adults or parents in any way. If a parent is comfortable with their child playing adult video games, we don't interfere with that."

Next up was Paul M. Smith, a partner in the law firm Jenner & Block. Smith has represented the Entertainment Software Association (ESA) and the Video Software Dealers Association (VSDA) in successful challenges to game-restriction laws in several states, including Illinois, Michigan, and California. He also defended a number of publishers--including the late Acclaim, Activision, Capcom, Eidos, Infogrames, Interplay, Nintendo of America, Sony Computer Entertainment America, and Square Enix (then SquareSoft)--in a federal lawsuit brought by a Columbine High School massacre victim's family.

Throughout his testimony, Smith cited dozens of legal decisions, many of which were made in cases he personally argued. "In each case I have been involved with, as well as every other to consider the issue, courts have struck down as unconstitutional legal restrictions on minors' access to 'violent' video games," he said.

The crux of Smith's testimony is that, like film or books, games are a form of expression. "Video games feature the artwork of leading graphic artists, as well as music--much of it original--that enhances the game's artistic expression in the same way as movie soundtracks," he said. "These games often contain storylines and character development as detailed as [and sometimes based on] books and movies. These games frequently involve familiar themes such as good versus evil, triumph over adversity, and struggle against corrupt powers."

The attorney went on to explain that "every court to have considered the issue has found 'violent'

video game laws would not pass constitutional muster because the government lacks a legitimate and compelling interest in restricting video game content. Under well-settled First Amendment principles, expression may not be censored on the theory that it will cause some recipient to act inappropriately, unless it falls into the narrow category of speech 'directed to inciting' and 'likely' to incite 'imminent' violence."

Smith also pointed out that "courts also have rejected the argument that restrictions on 'violent' video games can be justified as a means to prevent 'psychological harm' to minors. ... The Supreme Court has said that the government cannot suppress minors' speech 'solely to protect the young from ideas or images that a legislative body thinks unsuitable for them.' "

The last speaker at the hearing was Kevin Saunders, a professor of law at Michigan State University. In his own words, Saunders has "spent the last dozen years studying the constitutional issues surrounding attempts to limit the access of children to depictions of extreme violence and other negative media influences."

In Saunders' opinion, "there are bases on which restrictions may overcome First Amendment limits and protect children from the dangers these products present." The first basis the professor cited "is to argue that sufficiently violent material, particularly when presented to children, may come within the obscenity exception to the First Amendment." After mentioning an Indiana case in which this approach worked, he also mentioned that the Supreme Court has never ruled that violent material cannot be restricted.

Saunders' second legal basis will likely prove the most troubling to gamers. This approach would argue that "video game play, like the play of pinball machines, is not an activity protected by the First Amendment." It would legally differentiate the expression of a game designer, which would be protected, from the playing of games, which would not be protected. As an example, he compared a sexually provocative dancer's movements, which is a performance and therefore expression, to a gamer playing in an arcade, which is not, even though others were watching him.

The last legal basis Saunders cited will be the most familiar--namely, that playing violent games causes "harm" to minors. He said this approach is the easiest, due to the "overwhelming consensus of the health and science community that media violence causes real-world violence." After citing a psychological study by the American Academy of Pediatrics, he then claimed that "the correlation of media violence with real-world violence is as strong as that for secondhand smoke and lung cancer, lead exposure in children and lower IQs, use of the nicotine patch and smoking cessation, and asbestos exposure and cancer of the larynx."

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